

**CARUSO POPE EDELL PICINI**

60 Route 46 East, Fairfield, New Jersey 07004  
973-667-6000 973-667-1200 facsimile

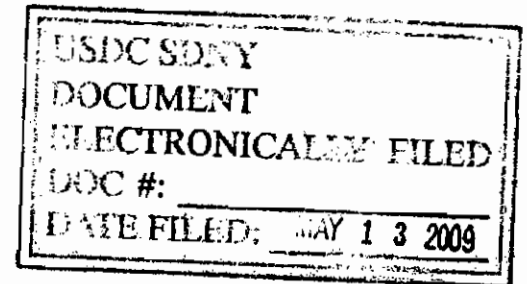
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

Anthony J. Pope, Esq.  
[apope@carusopope.com](mailto:apope@carusopope.com)

May 12, 2009

**Via Facsimile (212-805-0426) and First Class Mail**

The Honorable Laura Taylor Swain, U.S.D.J.  
United States District Court  
Southern District of New York  
One Saint Andrew's Plaza  
New York, New York 10007



Re: **Anthony Casso v. Philip Carlo**  
**Docket No. 2009 Civ. 520 (LTS)(JCF)**

**MEMO ENDORSED**

Dear Judge Taylor Swain:

Please be advised that this firm represents the interests of Plaintiff, Anthony Casso, with regard to the above-referenced matter, which is scheduled for a Status Conference tomorrow, May 13, 2008 at 11:45am before Your Honor. As per my conversation with your law clerk, Sean Young, yesterday, I understand that our appearance at the Status Conference is not necessary in light of the fact that an answer has not yet been filed on behalf of Defendant, Philip Carlo, despite his being served with a copy of the summons and complaint.

By way of background, the complaint in this matter was filed on or about January 15, 2009. Upon receipt of the filed complaint, this firm set out to serve same upon Defendant, Philip Carlo. Since we had no valid address for Mr. Carlo, we conducted a "skip trace" and utilized the services of an investigator to determine where Mr. Carlo was currently residing. In the meantime, having previously corresponded with Kenneth J. Aronson, Esq. regarding the underlying cause of action associated with this matter, this firm contacted Mr. Aronson to inquire as to whether he would accept service of the summons and complaint on behalf of Mr. Carlo, with whom he obviously had a relationship. Mr. Aronson failed to respond to multiple requests.

Accordingly, on or about March 27, 2009, this firm issued a subpoena to Mr. Aronson, compelling the production of Mr. Carlo's last known address. On April 7, 2009, Mr. Aronson responded and provided an address for Mr. Carlo on 88<sup>th</sup> Street, New York, New York. The address was provided to our process server and multiple attempts were made to serve the summons and complaint upon Mr. Carlo there. Mr. Carlo continuously evaded the process server. Simultaneously, our investigator revealed that Mr. Carlo was currently located at an address on East 2<sup>nd</sup> Street, Freeport, New York. That address was also provided to our process server, who successfully served Mr. Carlo (described as a white male between the ages of 55 and 65) on April

25, 2009. A copy of the Affidavit of Service is attached hereto for Your Honor's reference.

On May 5, 2009, this firm received a letter from Mr. Aronson. The letter stated that Mr. Aronson had been contacted by Frank Carlo, the father of Philip Carlo, who claimed that he (Frank Carlo) was served with the summons and complaint. As such, Mr. Aronson asserted that the service of process was ineffective and requested that, in the event this firm moved for a default judgment, we advise him of same. Interestingly enough, in disputing the service, he admitted that Philip Carlo was 60 years old (consistent with the description contained on the process server's Affidavit).

In response to his letter, this firm immediately provided Mr. Aronson with a copy of the Affidavit of Service and, in light of his obvious relationship with the Carlo family and the fact that he continued to correspond with this firm on their behalf relating to this matter, indicated that we believed Mr. Aronson was acting in the capacity as Philip Carlo's legal representative. We further indicated that we believed he had an obligation, as an officer of the court, to aid us in serving the summons and complaint.

On May 6, 2009, this firm received another letter from Mr. Aronson, reaffirming his position that Philip Carlo was not served with a copy of the summons and complaint and, further stating that Philip Carlo was not in New York State on April 25, 2009.

In response to his letter, this firm requested that, should Mr. Aronson continue to maintain his position that Philip Carlo was not served, he should either agree to accept service of the summons and complaint on behalf of Philip Carlo or provide us with the address where Mr. Carlo is currently available to be served.

No response has been received from Mr. Aronson to date.

As per the Affidavit of Service, Philip Carlo was served on April 25, 2009. Nonetheless, he continues (through the assistance of Mr. Aronson) to dispute what appears to be valid service.

Thus, we are respectfully requesting guidance from Your Honor as to how to proceed with this matter.

*The conference is adjourned to July 17, 2009, at 10:15 AM. With respect to the issues regarding service, counsel is encouraged to review the Federal Rules of Civil Procedure and other relevant authorities as the Court does not give legal advice.*

Respectfully submitted,

CARUSO POPE EDELL PICINI, P.C.

BY: ALISSA D. HASCUP, ESQ. for  
ANTHONY J. POPE, ESQ.

**SO ORDERED.**

NEW YORK, NY

LAURA TAYLOR SWAIN

May 13, 2009 UNITED STATES DISTRICT JUDGE

New York

San Francisco

2009042217163

AO 440 (Rev. 10/93) Summons in a Civil Action RETURN OF SERVICE

SERVICE OF: SUMMONS, COMPLAINT, CIVIL COVER SHEET  
EFFECTED (1) BY ME: RICK LETTAU  
TITLE: PROCESS SERVER DATE: 04/25/09 @ 11:14 AM

CHECK ONE BOX BELOW TO INDICATE APPROPRIATE METHOD OF SERVICE:

☒ Served personally upon the defendant:  
PHILLIP CARLO

Place where served:  
42 EAST 2nd STREET FREEPORT, NY 11520

☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left:

Relationship to defendant:

Description of person accepting service: 5' 8"  
SEX: M AGE: 55-65 HEIGHT: 5' 6" WEIGHT: 165-180 SKIN: WHITE HAIR: GRAY/BLACK OTHER:

☒ To the best of my knowledge, said person was not engaged in the U.S. Military at the time of service

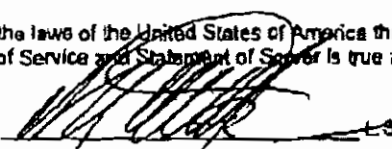
STATEMENT OF SERVER

TRAVEL \$ SERVICES \$ TOTAL \$

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in this Return of Service and Statement of Server is true and correct.

DATE: 04 / 25 / 2009

  
SIGNATURE OF RICK LETTAU  
GUARANTEED SUBPOENA SERVICE, INC.  
2009 MORRIS AVENUE  
UNION, NJ 07083

ATTORNEY: ANTHONY J POPE, ESQ  
PLAINTIFF: ANTHONY CASSO  
DEFENDANT: PHILLIP CARLO  
VENUE: DISTRICT OF NEW YORK  
DOCKET: 09 CIV 520 LTS JCF

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

ZC